

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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JAMES IKE SCHAAP,

Plaintiff,

v.

DEPARTMENT OF VETERANS AFFAIRS,  
et al.,

Defendants.

Case No. 3:13-cv-00160-MMD-VPC

ORDER

Plaintiff initiated this action on March 29, 2014, against the Department of Veteran Affairs. (Dkt. no. 1.) Defendant has filed a Motion to Dismiss ("Motion"). (Dkt. no. 15.) Plaintiff has filed a response (dkt. no. 17); and Defendant has filed a reply (dkt. no. 18). Defendant's Motion requests dismissal under Fed. R. Civ. P. 12(b)(5) and 12(b)(6). The Court finds that dismissal is warranted under Rule 12(b)(5) and declines to address the other grounds raised in Defendant's Motion.

Rule 12(b)(5) warrants dismissal of a case for insufficient service of process. "A federal court is without personal jurisdiction over a defendant unless the defendant has been served in accordance with Fed. R. Civ. P. 4." *Crowley v. Bannister*, 734 F.3d 967, 974-75 (9th Cir. 2013) (citations and internal quotation marks omitted). "Once service is challenged, plaintiffs bear the burden of establishing that service was valid under Rule 4." *Brockmeyer v. May*, 383 F.3d 798, 801 (9th Cir. 2004).

Service on an agency of the United States is effected by (1) delivery of the summons and complaint to the United States Attorney — or a designated official — for the district where the action is brought, or by mailing a copy of the summons and complaint by certified or registered mail to the civil-process clerk at the United States

1 Attorney's Office, and (2) sending a copy of the summons and complaint by certified or  
2 registered mail to the Attorney General of the United States in Washington, D.C. Fed.  
3 R. Civ. P. 4(i)(1)(A)-(B).

4 Defendant has demonstrated that Plaintiff failed to comply with these service-of-  
5 process rules. The Complaint and Summons were issued on June 8, 2014, after Plaintiff  
6 paid the required filing fee. (Dkt. nos. 8, 9.) On October 22, 2014, the Clerk issued a  
7 notice regarding intention to dismiss for failure to file proof of service of the Complaint  
8 on Defendant. (Dkt. no. 14.) To date, Plaintiff has not filed proof of service. Thus, under  
9 these circumstances, the Court lacks personal jurisdiction over Defendant and must  
10 accordingly dismiss the case. *See Reynolds v. United States*, 782 F.2d 837, 838 (9th  
11 Cir. 1986) (per curiam) (upholding dismissal of complaint without prejudice where  
12 plaintiff failed to serve the United States Attorney's Office).


13 Plaintiff has also filed seven motions not to dismiss, which he characterizes as  
14 parts (2-7) to his motion. (Dkt. nos. 19, 21, 23, 25, 28, 30, 32.) These motions are  
15 improper. The Federal Rules of Civil Procedure do not provide for a plaintiff to move not  
16 to dismiss his complaint. These motions essentially repeat Plaintiff's arguments as to  
17 why the Court should not grant Defendant's Motion. To the extent they are responses to  
18 Defendant's Motion, these responses are also improper. Local Rule 7-2 permits only a  
19 motion, response and reply. The party opposing a motion is not permitted to file  
20 repeated responses.

21 It is therefore ordered that Defendant's Motion to Dismiss (dkt. no. 15) is granted.

22 It is further ordered that Plaintiff's motions not to dismiss (dkt. nos. 19, 21, 23, 25,  
23 28, 30 and 32) are stricken.

24 The Clerk is instructed to enter judgment in accordance with this Order and close  
25 the case.

26 DATED THIS 25<sup>th</sup> day of June 2015.

27   
28 MIRANDA M. DU  
UNITED STATES DISTRICT JUDGE